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In the Supreme Court of the United States

OCTOBER TERM, 1929

No. 275

VESTA BATTERY CORPORATION,

PETITIONER,

v.

THE UNITED STATES,

RESPONDENT.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

BRIEF ON BEHALF OF PETITIONER

THE ACTION OF THE COURT BELOW

The Court below rendered no opinion. The Special Finding of Facts and Judgment of the Court below (R. 19-28) are not yet recorded.

JURISDICTION OF THIS COURT

The Judgment of the Court below was rendered on May 6, 1929 (R-19). Petition for Certiorari was filed

in this Court on July 30, 1929, and granted October 21, 1929. By the same order the case was advanced and assigned for argument with No. 127, Universal Battery company vs. United States. Jurisdiction of this Court is by virtue of Section 240 of the Judicial Code as amended by Section 3 (b) of the Act of February 13, 1925.

THE QUESTION PRESENTED

The sole question in this case is whether the electric storage batteries manufactured and sold by this petitioner to any person other than an automobile manufacturer or producer, are "parts or accessories" for automobile trucks, automobile wagons, other automobiles and motor cycles, within the meaning of the statutes taxing the sale of such parts or accessories.

STATUTES AND REGULATIONS INVOLVED

Statutes.

The Revenue Act of 1918 (c. 18, 40 Stat. 1057) and the Revenue Act of 1921 (c. 136, 42 Stat. 227) contain materially identical provisions with respect to the question involved in this case and are as follows:

> "Section 900. On and after February 1, 1919, [1918 Act; 'January 1, 1922,' 1921 Act] there shall be levied, assessed, collected, and paid upon the following articles sold or leased by the manufacturer, producer, or importer, a tax equivalent to the following per cent of the price for which so sold or leased:
>
> "(1) Automobile trucks and automobile wag-

ons (including tires, inner tubes, parts, and accessories therefor, sold on or in connection therewith or the sale thereof) 3 per centum.

"(2) Other automobiles and motor cycles (including tires, inner tubes, parts, and accessories therefor, sold on or in connection therewith or with the sale thereof), except tractors, 5 per centum.

"(3) Tires, inner tubes, parts or accessories for any of the articles enumerated in subdivision (1) or (2), sold to any person other than a manufacturer or producer of any of the articles enumerated in subdivision (1) or (2), 5 per centum."

Section 600 of the Revenue Act of 1924, (c. 234, 43 Stat. 253, 322) provides:

"That from and after January 1, 1922, there shall be levied, assessed, collected, and paid upon the following articles sold or leased by the manufacturer, producer, or importer, a tax equivalent to the following percentage of the price for which so sold or leased—

"(1) Automobile truck chassis and automobile wagon chassis sold or leased for an amount in excess of $1,000, and automobile truck bodies and automobile wagon bodies sold or leased for an amount in excess of $200 (including in both cases tires, inner tubes, parts, and accessories therefor sold on or in connection therewith or with the sale thereof), 3 per centum. A sale or lease of an automobile truck or of an automobile wagon shall, for the purposes of this subdivision, be considered to be a sale of the chassis and of the body;

"(2) Other automobile chassis and bodies and motor cycles (including tires, inner tubes, parts, and accessories therefor sold on or in connection therewith or with the sale thereof), except tractors, 5 per centum. A sale or lease of an automobile shall, for the purposes of this subdivision, be considered to be a sale of the chassis and of the body;

"(3) Tires, inner tubes, parts, or accessories for any of the articles enumerated in subdivision (1) or (2), sold to any person other than a manufacturer or producer of any of the articles enumerated in subdivision (1) or (2), 2½ per centum. This subdivision shall not apply to chassis or bodies for automobile trucks, automobile wagons, or other automobiles."

Regulations of Treasury Department.

Regulations 47 promulgated by the Commissioner of Internal Revenue, in pursuance of the authority granted by Congress, provided in part as follows with respect to what constitutes a "part for an automobile truck, automobile wagon, other automobile, or motor cycle," i. e.

"Art. 14. * * * Any article which has reached a state of manufacture wherein it is in itself a component part or accessory, and is of such a nature that it may be used or attached by an ordinary repair man or individual user as distinguished from a manufacturer or producer, is subject to tax as a 'part' or 'accessory.'"

* * * * *

"Art. 15. * * * any article designed or manu-

factured for the special purpose of being used as or to replace a component part of any such vehicle and which by reason of some peculiar characteristic is not such a commercial commodity as would ordinarily be sold for general use and which is primarily adapted only for use as a component part of such vehicle."

* * * * *

"Articles, however, which ordinarily would be classed as commercial commodities, become parts when, because of their design or construction, they are primarily adapted for use as component parts of such vehicles."

"Component parts of articles taxable under this definition are taxable when sold separately, if they have reached such stage of manufacture that they are primarily adapted for use as such a component part."

Art. 16. provides: "An accessory for an automobile truck, automobile wagon, other automobile, or motor cycle is any article designed to be attached to or used in connection with such vehicle to add to its utility or ornamentation and which is primarily adapted for use in connection with such vehicle, whether or not essential to its operation."

* * * * *

"Articles which have a general commercial use and which are not especially designed and peculiarly adapted for use in connection with automobile trucks, automobile wagons, other automobiles, or motor cycles are not subject to tax as 'parts' or 'accessories.'"

STATEMENT OF THE CASE

The facts in this case are, briefly stated, as follows:

We believe it to be judicial knowledge that the storage battery was a commercial commodity long prior to the advent of the automobile and was commonly and generally used for a variety of practical purposes. Paragraph VI of the Special Finding of Fact below (R. 26-27) describes, in detail, the universal structure of the storage battery. There is no particular shape for a storage battery. Sometimes storage batteries are oblong sometimes square (R. 27, Par. VI).

The petitioner has been since 1919, manufacturing and selling storage batteries. During the period from February, 1919, to September, 1925, the petitioner paid to the respondent manufacturers' excise taxes, penalties and interest in the sum of $376,324.45, upon the sale of storage batteries under Subdivision (3) of Section 900 of the Revenue Acts of 1918 and 1921, and Section 600 of the Revenue Act of 1924. (R. 19-25.) The Commissioner of Internal Revenue denied refund claims and the petitioner brought action in due season for $324,975.52 in the Court of Claims (R. 19-26, Par. I-V).

The batteries were used to furnish electric current for numerous and various devices such as for ignition on internal combustion engines; for operation of farm lighting plants; telephone exchanges; on motor boats; signal systems; radios; ignition, lighting and starting service on automobiles; for operating railway switches, etc. (R. 27, Par. VII).

The batteries were sold principally to dealers and job-

bers, who were in the business of conducting garages and service stations. The batteries were especially suitable for use on automobiles and were not adapted to any other primary purpose. They were advertised for use on automobiles. Any of the batteries could be used on some automobile (R. 27-28, Par. VIII). It does not appear that there were any peculiar characteristics in these batteries which limited them to use in automobiles and the vehicles designated in the statute, or barred these batteries from their common use for the other purposes described.

On these facts the Court of Claims, in its Conclusion of Law, without discussion, rendered judgment against the petitioner, citing *Cole Storage Battery Co. vs. United States*, 65 *Ct. Cls.* 164, as its single authority.

SPECIFICATION OF ERRORS TO BE URGED

I. The Court of Claims erred in finding that the electric storage batteries manufactured and sold by the petitioner were parts or accessories for automobile trucks, automobile wagons, other automobiles and motor cycles and subject to the excise tax on the sale of such parts or accessories.

(a) The Court of Claims erred in its implied finding that the rule announced in *Cole Storage Battery Company vs. U. S.*, 65 *Ct. Cls.* 164, is a correct statement of the intent of the statute involved in this case and in rendering judgment against the petitioner upon such grounds.

(b) The Court of Claims erred in failing to decide that the petitioner is entitled under the law to judgment.

SUMMARY OF ARGUMENT

It is the petitioner's contention:

(A) That the rule of law announced by the Court below is not a proper statement of the law applicable to this case for the reason that:

(1) The absence from Section 900, Subsections (1), (2) and (3), of the extensive language used elsewhere in Sections 900, 907, of the Revenue Act of 1918, negatives any intent to tax as parts or accessories for automobiles, etc., any articles other than those which are strictly parts of the vehicles taxed.

(2) The rule of law evolved below is in direct conflict with the principle that the accepted use of the nomenclature involved shall be employed to determine the limits of the taxing clause.

(3) The rule of law evolved below is in material conflict with the "usage" doctrine developed by this Court to determine taxable classifications.

(B) The proper rules of interpretation demonstrate that the electric storage batteries sold by this petitioner are not parts or accessories for automobiles, etc., and are not taxable as such.

ARGUMENT

The argument outlined in the above summary in support of the Specification of Errors to be Urged is the same as that appearing on pages 12 to 42 of the brief

filed in the case No. 127, Universal Battery Co. vs. United States, the companion case with that at bar and the case with which the present petition has been assigned for argument. The brief in that case is now in the hands of the Court and it seems an unnecessary imposition upon the time and energy of the Court to file another brief, practically all of which would be a repetition of the arguments developed in detail in case No. 127. Therefore, unless the Court indicates its desire for a more lengthy brief in the present case, none will be filed.

CONCLUSION

Wherefore, it is respectfully requested that the judgment of the Court of Claims should be reversed and the cause remanded with direction to enter judgment for your petitioner.

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